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J.M., Appellant)	
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and)	
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DEPARTMENT OF HOMELAND SECURITY,)	Docket No. 20-1626
CUSTOMS & BORDER PROTECTION, JFK)	Issued: April 9, 2021
INTERNATIONAL AIRPORT, Jamaica, NY,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On March 14, 2019 appellant, then a 48-year-old agriculture specialist, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2019 she was exposed to a coworker vaping at work while in the performance of duty. She explained that the vaping odor was intense and concentrated in a small room, causing severe headaches which led to olfactory migraines. Appellant stopped working on March 14, 2019. OWCP assigned the claim OWCP File No. xxxxxx639.

In a previous claim under OWCP File No. xxxxxx631, OWCP accepted that on June 3, 2011 appellant sustained a postconcussion at work. Appellant also previously filed claims under OWCP File Nos. xxxxxx681 and xxxxxx764, alleging that on March 9 and December 21, 2013 she was exposed to chemicals from an air freshener at work, which caused difficulty breathing and vertigo. She also previously filed a claim under OWCP File No. xxxxxx280, alleging that on October 11, 2017 she was exposed to the smell of paint, which caused headaches, migraines, and cough.

In support of her current claim, appellant submitted medical evidence, including an April 10, 2019 magnetic resonance imaging (MRI) scan of her brain and progress notes from Dr. John Dellorso, an internal medicine specialist, who diagnosed olfactory migraines and dysarthria.

By decision dated April 30, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted March 13, 2019 employment incident.

On March 26, 2020 appellant, through counsel, requested reconsideration of the April 30, 2019 decision.

Appellant submitted additional medical evidence, including a May 23, 2019 progress note from Dr. Dellorso, who repeated his diagnoses and opined that appellant's exposure to vapor fumes triggered olfactory migraine headaches that compromised blood flow to the Broca's area of her brain, eventually causing dysarthria, which was now resolving.

By decision dated March 31, 2020, OWCP denied modification of its April 30, 2019 decision.³

The Board finds that this case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.⁴ Evidence may not be incorporated by reference, nor may evidence from

³ OWCP referenced medical evidence from OWCP File Nos. xxxxxx631, xxxxxx681, xxxxxx764, and xxxxxx280. The Board notes that appellant's claims have not been administratively combined.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

another claimant's case file be used.⁵ Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.⁶ All evidence that forms the basis of a decision must be in that claimant's case record.⁷

In adjudicating the present claim, under OWCP File No. xxxxxx639, OWCP specifically referenced medical evidence related to appellant's prior claims in OWCP File Nos. xxxxxx631, xxxxxx681, xxxxxx764, and xxxxxx280. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-reference between files.⁸ However, OWCP has not combined the case records or incorporated the referenced evidence into the current case record. Because it neglected to include evidence that helped to form the basis for its determination regarding appellant's claimed conditions in the current case record, the Board is not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.⁹ Therefore, the case shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx639, xxxxxx631, xxxxxx681, xxxxxx764, and xxxxxx280. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's traumatic injury claim.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* See also *G.O.*, Docket No. 18-1483 (issued June 20, 2019).

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁹ *D.T., Order Remanding Case*, Docket No. 19-0867 (issued August 12, 2020).

IT IS HEREBY ORDERED THAT the March 31, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: April 9, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board